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UNITED STATE OF AMERICA,  
Plaintiff,  
v.  
ENRIQUE LOPEZ QUINTERO,  
Defendant.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Case No. [5:11-cr-00711-EJD](#)

**CORRECTED ORDER DENYING  
DEFENDANT'S "UNOPPOSED  
PETITION AND/OR MOTION FOR  
REDUCTION/MODIFICATION OF  
SENTENCE"**

Re: Dkt. No. 45, 51

On July 9, 2012, Defendant Enrique Quintero pled guilty pursuant to a written plea agreement to four counts charged in two case numbers: two counts of conspiracy to possess with intent to distribute and distribute methamphetamine in violation of 21 U.S.C. § 846; and two counts of possession with intent to distribute and distribution of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii).<sup>1</sup> Defendant was thereafter sentenced to four concurrent custodial terms of 240 months. Judgment was entered accordingly on October 17, 2012.

Defendant now petitions or moves for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 based on Amendment 782. Dkt. No. 45. Defendant argues he is entitled to a reduction because, though the Probation Officer determined he was a career offender, his plea agreement provides for a different calculation that was affected by the amendment. The Government argues otherwise. The Government is correct.

"For purposes of a motion for a sentence reduction, the applicable guideline range is the

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<sup>1</sup> The other case number is 5:11-cr-00550-EJD.

Case No.: [5:11-cr-00711-EJD](#)

**CORRECTED ORDER DENYING DEFENDANT'S "UNOPPOSED PETITION AND/OR MOTION FOR REDUCTION/MODIFICATION OF SENTENCE"**

1 pre-departure, pre-variance range calculated by the court at sentencing.” United States v. Hill, 674  
2 Fed. App’x 738 (9th Cir. 2017). This is true even if the defendant’s plea agreement calculates a  
3 different sentencing range. See id. (citing United States v. Pleasant, 704 F.3d 808, 811-12 (9th  
4 Cir. 2013)). Furthermore, a sentence reduction is inconsistent with the policy underlying § 1B1.10  
5 if none of its specified amendments apply to the defendant. U.S.S.G. § 1B1.10(a)(2).

6 Here, the Presentence Investigation Report reveals the pre-departure, pre-variance  
7 guideline range of 188 to 235 months was calculated based on the Career Offender provisions in  
8 U.S.S.G. § 4B1.1. This is the same guideline range identified by the court at the sentencing  
9 hearing (Tr., Dkt. No. 54 in Case No. 5:11-cr-0050-EJD, at 4:19-5:2), and it is this range, not the  
10 one calculated in the plea agreement, that is applicable for the purposes of a sentence reduction.  
11 See Hill, 674 Fed. App’x at 738. Because § 4B1.1 was unaffected by Amendment 782, Defendant  
12 is not entitled to relief by the express terms of § 1B1.10(a)(2).

13 Accordingly, Defendant’s “unopposed petition and/or Defendant’s motion for  
14 reduction/modification of sentence” (Dkt. No. 45) is DENIED. The Court also DENIES a  
15 certificate of appealability.

16  
17 **IT IS SO ORDERED.**

18 Dated: January 4, 2019



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20 EDWARD J. DAVILA  
21 United States District Judge  
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Case No.: [5:11-cr-00711-EJD](#)  
CORRECTED ORDER DENYING DEFENDANT’S “UNOPPOSED PETITION AND/OR  
MOTION FOR REDUCTION/MODIFICATION OF SENTENCE”